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SUPREME COURT, U.S.
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No. 852

In the Supreme Court of the United States

OCTOBER TERM, 1960

MARY G. ROEBLING, PETITIONER

v.

C. DOUGLAS DILLON, SECRETARY OF THE TREASURY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The original judgment of the district court dismissing petitioner's complaint is unreported. The first opinion of the court of appeals (Pet. App. A)[1] is reported at 257 F. 2d 615. The district court's findings of fact and conclusions of law on remand (Pet. App. B) are unreported. The second opinion of the court of appeals (Pet. App. C) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on February 9, 1961. The petition for a writ of cer-

[1] "Pet. App." refers to the appendices attached to the petition.

tiorari was filed on March 27, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the petitioner failed to sustain her burden of proof to establish either a contract, express or implied, with the Reconstruction Finance Corporation, or quasi-contractual liability.

STATEMENT

1. The petitioner's husband was a director of the Trenton Trust Company of Trenton, New Jersey (hereafter referred to as the Bank) up to the time of his death on January 1, 1936. In 1933, the petitioner's husband and five other directors entered into an arrangement whereby they gave their personal notes totaling $585,000 to the Bank in exchange for the withdrawal of a like amount of "slow assets" (*i.e.* almost worthless accounts receivable) from the Bank and deposit of those assets with three trustees (Pet. App. 2b, 3b).[2] The purpose of replacing the "slow assets" with these notes was to attempt to restore the Bank's financial integrity impaired by the depression.

In 1934 the Bank (acting through a wholly-owned subsidiary, Trentrusco) obtained a $2,000,000 loan from RFC. In return it gave RFC a note from Trentrusco for $2,000,000, secured by collateral with a face value of 2.5 million, consisting of: (1) 100,000 shares of the Bank's Preferred Stock A (with a liquidation value of $20 per share), and (2) $500,000 worth of the "slow assets" which the Bank had ob-

[2] The note of the petitioner's husband was in the amount of $200,000 (Pet. App. 2b).

tained from the directors' trustees (Pet. App. 2b–3b).[3] In September 1936 the Bank obtained a second $2,000,000 from RFC in exchange for another 100,000 shares of the Bank's Preferred Stock A (with the same liquidation value of $20 per share) (Pet. App. 3b).

Beginning in 1936 the Bank sought to have all of the 1933 personal notes of its directors paid, secured or at least placed in "bankable condition" by the payment of accrued interest plus some of the principal. Two of the six directors, Chamberlain and the petitioner's husband, had kept their notes in bankable condition up to the time of their deaths and the notes were so maintained afterwards by their estates. However, the other four directors objected to the Bank's request on the ground they were not required to pay until such time as the assets held by the trustees should prove insufficient to pay their notes (Pet. App. 4b).

RFC eventually stepped in and made a specific offer to all of the directors or their estates *except petitioner* (Pet. App. 4b–5b), to release shares of the Preferred Stock A (which it held as collateral on the 1934 $2,000,000 loan) to the individual directors in the amount of their respective notes. The offer was conditioned on a return promise that the directors would put their notes in bankable condition and use the shares as collateral. The petitioner was not included because her note was always kept in bankable condition and further, since she was a majority share-

[3] In return for the "slow assets," the Bank gave the trustees 5,000 shares of Trentrusco capital stock.

holder in the Bank, the RFC action would redound to her ultimate benefit (Pet. App. 10b). None of the five directors or their estates accepted the offer. RFC subsequently foreclosed on the Bank's Preferred Stock A and slow assets which it held as collateral, the Bank's note on the first loan then being in default (Pet. App. 5b–6b).

After RFC acquired the stock and assets by foreclosure in 1939, it once again offered each of the directors or their estates *except petitioner* (Pet. App. 6b) Preferred Stock A if they would place their notes in bankable condition. This offer was authorized on March 15, 1940, but subsequently rescinded by RFC on May 17, 1940,[4] when RFC decided to transfer a stated number of shares to these directors on the condition that they submit satisfactory proof that the notes were in bankable condition (Pet. App. 7b). Four of the five directors complied with the condition and received the stock offer.

The petitioner subsequently purchased most of this stock from three of the four directors at $6.00 per share (Pet. App. 8b) and added it to her existing holdings of Preferred A which already totaled approximately $1.85 million in face value (Pet. App. 3b).

2. The petitioner's action is founded on the assertion that her purchase of the stock from the directors constituted complete performance of her part of an alleged oral contract made on May 20, 1940, between her

[4] The March 15 offer was rescinded because RFC decided to add a provision reimbursing the directors for previously assessed costs of foreclosure.

representative and a RFC bank examiner.[5] The details of this alleged contract even as presented in the petition are somewhat obscure. Apparently, the oral understanding allegedly reached with the examiner was that, in return for the petitioner's act of purchasing the stock, she would receive from the government any amount by which the 2.5 million worth of collateral for the first Bank loan should exceed 2 million dollars in actual value. Thus, the petitioner stood to receive at least $500,000 under her alleged contract in return for her act of purchasing $67,200 worth of stock—which she later sold at a $140,000 profit (Pet. App. 10b).

The district court in its original action dismissed the petitioner's complaint for failure to establish such an express oral contract, and failure to establish either an implied contract or a quasi-contractual right. The court of appeals reversed on the ground that the petitioner was entitled to further discovery of certain documents and files (Pet. App. 9a–10a). On remand, the petitioner "announced that she did not need and did not ask for further discovery" (Pet. App. 1b). Instead, she relitigated her original contract allegations. After a full hearing of the petitioner's evidence, the complaint was dismissed once again for failure to establish either an express or implied contract or quasi-contractual right (Pet. App. 12b).

The court of appeals affirmed, holding that: (1) the petitioner failed to sustain her burden of proof in es-

[5] The functions of the RFC were transferred to the Secretary of the Treasury by §§ 2d(e) and 3, Reorganization Plan No. 1 of 1957, 22 Fed. Reg. 4633.

tablishing an express contract (Pet. App. 2c); (2) the conduct of the parties did not "clearly enough" give rise to a finding of an implied contract and (3) the petitioner had failed to demonstrate that RFC had been unjustly enriched by any action of the petitioner (Pet. App. 3c).

ARGUMENT

The petitioner's cause of action is dependent upon proof of the existence of an express or implied contract or on a right grounded on quasi-contractual principles. Both courts below, on findings of fact by the district court, have now held that the petitioner has not sustained her burden of proving facts essential to sustain her claim on any theory. The concurrent findings of the courts below are conclusive in this Court in the absence of exceptional error. *Corn Products Co.* v. *Commissioner,* 350 U.S. 46, 51; *Comstock* v. *Group of Investors,* 335 U.S. 211, 214. Further review by this Court is, in these circumstances, unwarranted.

1. The petitioner's assertion that the trial court abused its discretion under Rule 41(b), Fed. R. Civ. P., amounts to a reiteration of her convictions concerning the weight and probative effect of the evidence presented to the courts below, but rejected by those courts as insufficient to establish any contractual basis for her claims. The claim that the district court abused its discretion is without merit as is her assertion that the court of appeals misapplied the "clearly erroneous" test of Rule 52(a). Neither of these inherently factual questions warrants this Court's consideration.

2. Moreover, there is no conflict of decisions. The cases upon which the petitioner relies (Pet. 24–30) deal with causes of action and facts wholly unrelated to this case. Manifestly, the sufficiency of proof in a particular case is dependent upon the particular circumstances. Thus, the general discussions contained in the petitioner's cases in no way detract from, or contradict, the specific determinations of the courts below.*

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1961.

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*Obvious defects in the sufficiency and quality of the petitioner's evidence were: (1) lack of any showing of authority on the part of the bank examiner to enter into or bind the government to the alleged contract (Pet. App. 6b–7b); (2) the absence of any specific unequivocal ratification of such a contract, and (3) the inherently improbable nature of the alleged contract.

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MARY G. ROEBLING, Petitioner,

v.

C. DOUGLAS DILLON, SECRETARY OF THE TREASURY,
(Substituted for Reconstruction Finance Corporation),
Respondent.

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BRIEF IN REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

REPLY TO RESPONDENT'S STATEMENT

The statement of facts in respondent's brief contains inaccuracies and argumentative conclusions which have no basis in the record evidence or findings of the courts below. For example, respondent emphasizes (Respondent's Brief, pages 3 and 4) that RFC offered to release preferred A stock of the Bank to all directors or their estates except the petitioner. This statement completely ignores the fact that documentary evidence from the RFC files indicated that such stock would be released to petitioner once both RFC loans were paid in full. It also ignores the vital fact that RFC, under official authorization of its board of directors, actually did release 1200 shares of such stock to petitioner. (Pet., page 23)

Respondent states (Brief, page 3) that petitioner was not included in the agreement to release preferred stock A of the Bank to other directors of the bank because her note was always kept in bankable condition and because she was a majority shareholder of the bank. There is not a scintilla of evidence in the record to support this argumentative inference. As a matter of fact, stock was released to the estate of Chamberlain who had always recognized his note and kept it in bankable condition. Nowhere does it appear that petitioner's position as majority stockholder of the Bank was considered in arranging for release of the stock.

Respondent also states (Brief, page 5) that petitioner stood to receive at least $500,000 under her alleged contract in return for her act of purchasing $67,200 worth of stock which she later sold at a profit. Presumably this statement is made to convince the Court that the petitioner received payment for her undertaking under the contract she has alleged. Respondent fails to note that petitioner purchased the stock at a time when there was no market for it and that the assets pledged to secure the RFC loans were "slow assets" which might never be recovered upon. The statement is a continuation of respondent's argument that there can be no consideration for a contract if it is ultimately profitable. Petitioner submits that this is irrelevant and that the argument overlooks the meaning of consideration in the sense of legal detriment.

Respondent's footnote 6 (Brief, page 7) likewise lacks support in the record.

REPLY TO RESPONDENT'S ARGUMENT

The petitioner respectfully submits that respondent in its brief in opposition to the petition for a writ of certiorari has made no real attempt to answer the arguments and cases as presented and cited by petitioner. Respondent cites only two cases in its brief in support of its argument that this Court should not grant the writ. Both cases are clearly distinguishable and inapplicable to the case at bar.

In Corn Products R. Co. v. Commissioner of Int. Rev., 350 U.S. 46 (1955) reh. den. 350 U.S. 943 (1956), cited by the

respondent, the Supreme Court specifically noted that the petitioner there had made no direct attack on the "two-court findings" below. This Court held at page 50:

> "Both the Tax Court and the Court of Appeals found petitioner's futures transactions to be an integral part of its business designed to protect its manufacturing operations against a price increase in its principal raw material and to assure a ready supply for future manufacturing requirements. Corn Products does not level a direct attack on these two-court findings but insists that its futures were 'property' entitled to capital-asset treatment under § 117 and as such were distinct from its manufacturing business. We cannot agree." (emphasis supplied)

It is further significant that the Supreme Court in the Corn Products case, supra, despite the concurrent findings of the two lower courts nevertheless granted the writ of certiorari, examined the record in that case and made findings which respondent would regard as "inherently factual" before deciding the case. [1]

In Comstock v. Group of Institutional Investors, 335 U.S. 211 (1948), reh. den. 335 U.S. 837 (1948), the only other case cited by respondent, the Supreme Court noted that the petitioner had assumed the correctness of the findings of the District Court but had departed in its argument from such assumptions and invited the Supreme Court to reach different conclusions. [2]

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[1] The opinion states, at page 50:

> "We find nothing in this record to support the contention that Corn Products' futures activity was separate and apart from its manufacturing operation. On the contrary, it appears that the transactions were vitally important to the company's business as a form of insurance against increases in the price of raw corn. . . " (emphasis supplied)

[2] The Court stated at page 213:

> "The issues of fact, contested in a long hearing, are not before us for review. Petitioner assured us, in support of the petition for certiorari here, that 'there is no factual controversy before this Court' and 'we assume the findings of the District Court. Our

(continued on following page)

Petitioner in the instant case does not assume the correctness of the findings of either the District Court or the United States Court of Appeals for the District of Columbia Circuit.

Respondent states (Brief, page 6) that "Both courts below, on findings of fact by the District Court . . . have held against petitioner." It should not be inferred from this that the findings are concurrent in the sense that the Court of Appeals adopted the findings of the District Court. Such is not the case. See Petition, Appendices B and C.

Even aside from these basic distinctions between the foregoing two cases cited by respondent and the present case, it is submitted that they are inapplicable as authorities in opposition to a Petition for Certiorari since the Court granted the writ in both cases.

Petitioner submits that respondent's argument that there is no conflict of decisions is based upon a misreading of the cases and misconception of the nature of the questions presented by the petition. The petitioner has cited contract cases and others in support of her argument. Respondent, however, takes the apparent position that

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2 (Continued from preceding page)

challenge is directed only to the legal import of these unchallenged facts.' "

Assuming arguendo, that the findings of both courts in the present case were "concurrent", it is submitted that exceptional error has been shown in the present case, as the findings against petitioner were made despite the fact that positive and controlling documentary and testimonial evidence supported her claims and was neither impeached nor contradicted.

It is further noted that in the Comstock case, supra, the Court of Appeals for the 8th Circuit (as well as the Supreme Court) had found (163 F.2d 350, 357) that:

> "On this appeal the case is stated for the appellant in substantial disregard of the findings of the trial court and practically as though the case was here to be tried by this court de novo on the voluminous evidence. This court must decline to assume that function." (emphasis supplied)

Petitioner has not so erred. The Court of Appeals did not so find, nor does the respondent charge that the petitioner's arguments have disregarded the findings.

petitioner must cite cases involving identical facts and causes of action. It is petitioner's position that a trial judge in a District Court, sitting without a jury in a civil action, has certain duties under Rules 41(b) and 52 of the Federal Rules of Civil Procedure which remain constant. This duty does not vary from case to case. Similarly, the supervisory functions and responsibilities of the Circuit Courts of Appeals remain constant, in case after case.

The petitioner reiterates that there is a real and serious conflict between the decision of the Court of Appeals in the instant case and the decisions of this Court in Chesapeake & Ohio Ry. Co. v. Martin, 283 U.S. 209, 215-22, 51 S.Ct. 453 (1931), and in Pence v. U. S., 316 U.S. 332, 62 S.Ct. 1080 (1942); as well as the decisions in Twentieth Century-Fox Film Corp. v. Dieckhaus, 153 F.2d 893, cert. den. 329 U.S. 716, 67 S.Ct. 46 (1946) and other cases cited in the petition.

If respondent's argument on this point were valid, then the determination of the vital questions of procedure and the administration of justice involved in this and similar cases might never be made by this Court. In this event, the petitioner, and future plaintiffs whose cases may be dismissed before the presentation of any defense evidence, on the basis of records containing uncontradicted evidence supporting such plaintiffs' claims will be left without either a remedy for judicial error or so much as a guideline for future litigation.

The respondent also attempts to persuade this Court to dismiss the present petition by an assertion, unsupported by the citation of a single case, that abuse of discretion of a judge of a United States District Court or misapplication of the "clearly erroneous" test of Rule 52(a) of the Federal Rules of Civil Procedure by a United States Court of Appeals are "inherently factual questions" not warranting consideration by this Court.

Such a position would preclude the Supreme Court from ever clarifying what constitutes an abuse of discretion or a disregard of the "clearly erroneous" rule, and it would prevent this Court from correcting exceptional error such as exists in the present case. The result would be to vest in the lower courts the absolute and untrammeled authority to dismiss cases in complete disregard of sound judicial discretion and the rights of a plaintiff.